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U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

September 15, 2022

VIA ECF

The Honorable Mary Kay Vyskocil
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Mohammed, et al. v. United States Dept. of Agric., Food and Nutrition Svc.,
22 Civ. 4721 (MKV)

Dear Judge Vyskocil:

The U.S. Attorney's Office represents defendant the United States Department of Agriculture, Food and Nutrition Service (the "USDA" or "Defendant") in the above-referenced action in which plaintiffs Rashad Lutf Ahmed Mohammed and 1902 New Way Gourmet Inc. ("Plaintiffs") challenge their six-month disqualification from the Supplemental Nutrition Assistance Program ("SNAP"). I write to request clarification of the briefing schedule on Defendant's motion to dismiss the complaint in light of the First Amended Complaint filed by Plaintiffs today, and if necessary, a brief adjournment of the motion filing deadline.

Plaintiffs commenced this action on June 6, 2022. See Compl. (ECF No. 1). On August 8, 2022, the USDA filed a letter motion requesting leave to file a motion to dismiss the complaint on sovereign immunity grounds. Letter Motion dated August 8, 2022 (ECF No. 9). Plaintiffs did not file a response. On August 23, 2022, the Court granted the USDA's request for leave to file a motion to dismiss the complaint and set a briefing schedule, with the USDA's opening brief due by September 15, 2022 (today). See Scheduling Order (ECF No. 10). Alternatively, the Scheduling Order directed Plaintiffs to file a letter by September 1, 2022, advising if they intended to amend their complaint in response to the arguments raised in Defendant's August 8 letter motion, and if so, to file any such amended complaint by September 15. See id. The Court advised that this was Plaintiffs' "last opportunity" to amend the complaint in response to the arguments raised in the USDA's letter. Id.


Plaintiffs did not file a letter by September 1, 2022, or at any time, advising the Court or Defendant of an intent to file an amended complaint. Nor did Plaintiffs advise Defendant by any other means that it intended to amend its complaint. As such, the USDA prepared its motion to dismiss, which is ready to be filed today. Nevertheless, earlier today, Plaintiffs filed a First Amended Complaint. See Am. Compl. (ECF No. 11). The First Amended Complaint is largely identical to the original complaint except for a new allegation that Plaintiffs "received" the USDA's final agency decision on May 5, 2022, and their assertion that their original complaint was timely filed on June 6, 2022. Id. ¶¶ 12, 15.

In light of today's untimely filing, the USDA respectfully requests clarification as to whether the original or amended complaint is operative, which complaint Defendant's motion to dismiss should address, and the briefing schedule. If the First Amended Complaint is untimely, the USDA respectfully requests that the Court formally strike this pleading (or grant leave to move for same) or issue an Order stating that the original complaint remains operative, and reset Defendant's deadline to file its motion to dismiss within one week therefrom. Alternatively, if the Court deems the amended complaint to be timely filed, the USDA respectfully requests leave to move to dismiss the First Amended Complaint on substantially the same grounds as set forth in the pre-motion letter dated August 8, 2022—sovereign immunity, failure to state a claim, and failure to serve process—and to set a new briefing schedule. See Individual Rules ¶ 4(A)(i). If a new briefing schedule is set, the USDA respectfully proposes that its deadline to file the motion to dismiss be set at least one week after the Court enters a new scheduling order.

I thank the Court for consideration of this request.

The Court will accept Plaintiffs' Amended Complaint as the operative pleading, but will admonish Plaintiffs that they must follow the deadlines set by this Court. Defendant must respond to the Amended Complaint within 14 days of its filing. In the event that the defendant files a new motion to dismiss, the briefing for that motion will be on the schedule set forth in Local Rule 6.1(b). SO ORDERED.

Date: 9/19/2022
New York, New York


Mary Kay Vyskocil
United States District Judge

Respectfully,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Carly Weinreb

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